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# Transitional Justice Legislation in Taiwan before and during the Tsai administration

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## I. INTRODUCTION

This Article seeks to deepen our collective understanding of East Asian experiences of transitional justice by examining the influence of post-democratization local conditions on the

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scope and language of transitional justice legislation in Taiwan. To date, scholarly studies in the field of transitional justice cover a wide range of geographical jurisdictions, historical periods, and theoretical debates, as well as various forms of conflict and modes of post-conflict resolution.<sup>1</sup> The results of numerous case studies elaborating European, Latin American, Middle Eastern, and African experiences have further served to both refine and advance the field of transitional justice. Until recently, however, few Anglophone publications have given much attention to contemporary transitional justice issues and practices in East Asian jurisdictions (i.e., China, Hong Kong, Taiwan, South Korea, and Japan).<sup>2</sup> Individuals and groups within many of these countries experienced various levels of abuses during long periods of colonial and/or authoritarian rule. As some of these countries transitioned into democracies, their governments and citizenry were often forced to confront the grievous human rights violations of the past. Their attempts to address these violations often drew upon lessons learned from transitional justice experiences of the Euro-west, Africa, and Latin America, yet in the end, their approaches, aims, and practices were often tailored to localized contexts.<sup>3</sup> As is often the case, the social, political, and economic local conditions of democratic transition either facilitated or constrained

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<sup>1</sup> See for example, Ruti G. Teitel, *Human Rights in Transition: Transitional Justice Genealogy*, 16 HARV. HUM. RIGHTS J. 69–94 (2003); Thomas Obel Hansen, *The Vertical and Horizontal Expansion of Transitional Justice: Explanations and Implications for a Contested Field*, in TRANSITIONAL JUSTICE THEORIES 105–124 (Susanne Buckley-Zistel et al. eds., 2014).

<sup>2</sup> With the exception of studies on Japanese war crimes during World War Two, there are few publications providing coverage of contemporary East Asian experiences with transitional justice. See, for example, TRANSITIONAL JUSTICE IN THE ASIA-PACIFIC, (Renée Jeffery & Hun Joon Kim eds., 2014); INHERITED RESPONSIBILITY AND HISTORICAL RECONCILIATION IN EAST ASIA, (Jun-Hyeok Kwak & Melissa Nobels eds., 2013).

<sup>3</sup> Leigh A. Payne and Kathryn Sikkink, 'Transitional Justice in the Asia-Pacific: Comparative and Theoretical Perspectives,' in *Transitional Justice in the Asia-Pacific*, ed. Renée Jeffery and Hun Joon Kim (Cambridge: Cambridge University Press, 2014), 33–60.

the availability of specific pathways to justice as well as the very conceptualization of post-transition justice.<sup>4</sup>

The Republic of China on Taiwan (hereafter, Taiwan) successfully, and peacefully, transitioned from authoritarian one-party rule into a constitutional democracy in the early 1990s, yet due to the island's complex international status and fraught relationship with China, as well as a rather conservative government approach to post-authoritarian discourse on past human rights violations, there has been relatively little scholarly interest in Anglophone academia on Taiwanese transitional justice issues.<sup>5</sup>

Despite the dearth of extant analysis, the study of Taiwan's unique experience offers important insights into the impact of localized post-transition political dynamics on governmental responses to human rights abuses of the past. First, in most post-transitional societies, it is common for the former ruling party to be dissolved or, at the very least, many of the primary actors of the party to experience a significant loss of political power.<sup>6</sup> In Taiwan, however, the

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<sup>4</sup> For examples of the issues related to translating international norms and expectations into local contexts, see generally LOCALIZING TRANSITIONAL JUSTICE: INTERVENTIONS AND PRIORITIES AFTER MASS VIOLENCE, (Rosalind Shaw, Lars Waldorf, & Pierre Hazan eds., 2010); TRANSITIONAL JUSTICE: GLOBAL MECHANISMS AND LOCAL REALITIES AFTER GENOCIDE AND MASS VIOLENCE, (Alexander Laban Hinton ed., 2011); LIA KENT, THE DYNAMICS OF TRANSITIONAL JUSTICE: INTERNATIONAL MODELS AND LOCAL REALITIES IN EAST TIMOR (2013).

<sup>5</sup> For notable exceptions, see Naiteh Wu, *Transition without Justice, or Justice without History: Transitional Justice in Taiwan*, 1 TAIWAN J. DEMOCR. 77–102 (2005); Vincent Weicheng Wang & Samuel Chang-yung Ku, *Transitional Justice and Prospect of Democratic Consolidation in Taiwan: Democracy and Justice in Newly Democratized Countries*, 4 GUOJIA FAZHAN YANJIU 國家發展研究 1–38 (2005); JUSTICE RESTORED?: BETWEEN REHABILITATION AND RECONCILIATION IN CHINA AND TAIWAN, (Agnes Schick-Chen & Astrid Lipinsky eds., 2012). The recent increase in transitional justice discourse in Taiwan has resulted in new English language research, such as Jau-yuan Hwang, *Transitional Justice in Postwar Taiwan*, in ROUTLEDGE HANDBOOK OF CONTEMPORARY TAIWAN 169–183 (Gunter Schubert ed., 2016); Ian Rowen & Jamie Rowen, *Taiwan's Truth and Reconciliation Committee: The Geopolitics of Transitional Justice in a Contested State*, 11 INT. J. TRANSITIONAL JUSTICE 92–112 (2017).

<sup>6</sup> RUTI G. TEITEL, TRANSITIONAL JUSTICE 160–169 (2000). (examining the purges of political parties in post-soviet Europe).

authoritarian party, the Chinese Nationalist Party (*Kuomin tang* 國民黨, hereafter KMT), directed the process of democratization beginning in 1987, and also maintained its control over the democratically presidency from 1992 until 2000 and the democratically elected legislature from 1992 until 2016. Second, due to the significant reduction of state violence during the waning years of martial law and the tremendous economic growth of Taiwan under KMT stewardship, when the island transitioned to democracy there was an initial ambivalence within major portions of the population towards ‘punishing’ the KMT through transitional justice mechanisms such as lustration, vetting, or criminal tribunals.<sup>7</sup>

This Article examines the influence of post-democratization local conditions on the scope and language of transitional justice legislation during two phases of Taiwan’s legislative history. The first period runs from the initial steps towards democratization in 1987 until 2016. During this era, the former authoritarian Chinese Nationalist Party managed to retain a majority voice in the elected legislature and dictate Taiwan’s pathway to transitional justice. The KMT was thus able to limit any legislation requiring accountability or the possibility of prosecution for past abuses perpetrated during the forty years in which the party held absolute power. Unable to fully ignore calls for confronting past abuses, the KMT dominated legislature passed three pieces of transitional justice legislation during this period that provided limited reparations and restoration of honor to a narrow category of victims. The second period runs from January 2016 to the present, when the Democratic Progressive Party (*Minjin dang* 民進黨 hereafter, DPP) succeeded in winning not only the presidency, but more importantly for the first time in Taiwan’s history it won an elected majority in the legislature. Victory in the legislature allows the current DPP

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<sup>7</sup> See Wu, *supra* note 6 at 93. (noting that “the remote moment of repression combined with the fresh memory of satisfactory economic performance have largely decreased the demand for transitional justice.”)

government to actively pursue transitional justice legislation with minimal concern over interference from the KMT. Furthermore, the election leading up to 2016 reinvigorated transitional justice discourse in Taiwan and since the rise of the DPP, there have been numerous legislative bills related to transitional justice submitted by various groups, including the KMT.<sup>8</sup>

Part II of this Article provides a brief overview of the historical events giving rise to the *need* for transitional justice in Taiwan. Part III examines the language and scope of transitional justice legislation passed by the KMT dominated legislature against the backdrop of the process of democratization. Part IV examines the reinvigoration of transitional justice discourse during the presidential and legislative campaigning for the 2016 elections, as well as its influence on the scope and language of legislative bill proposals made by the DPP after the party's electoral victories. Part V concludes the Article by considering the future of transitional justice legislation in Taiwan.

## II. TAIWANESE SOURCES OF INJUSTICE

Scholars typically categorize Taiwan's sources of injustice historically within three distinct periods.<sup>9</sup> The first period began in 1895, when shortly after suffering a humiliating defeat in the Sino-Japanese War, the imperial government of Qing China (清 1644-1911), was forced to sign the Treaty of Shimonoseki (下関条約, 17 April 1895) with Japan. Among the conditions of the

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<sup>8</sup> Kuo min tang dang tuan 國民黨黨團 [KMT Caucus], ZHUAN XING ZHENG YI JI CU JIN REN MIN TUAN JIE YU HE JIE TIAO LI CAO AN 轉型正義及促進人民團結與和解條例草案 [TRANSITIONAL JUSTICE AND THE PROMOTION OF SOCIETAL UNIFICATION AND RECONCILIATION BILL] LI FA YUAN QUAN QIU ZI XUN WANG 立法院全球資訊網 [LEGISLATIVE YUAN OFFICIAL WEBSITE] (2017), [http://lci.ly.gov.tw/LyLCEW/agenda1/02/pdf/09/03/10/LCEWA01\\_090310\\_01505.pdf](http://lci.ly.gov.tw/LyLCEW/agenda1/02/pdf/09/03/10/LCEWA01_090310_01505.pdf) (last visited Jun 25, 2017).

<sup>9</sup> Jau-yuan Hwang, *Transitional Justice in Postwar Taiwan*, in ROUTLEDGE HANDBOOK OF CONTEMPORARY TAIWAN 169–183, 169–170 (Gunter Schubert ed., 2016).

treaty, the Chinese government ceded control over the island of Taiwan to the Japanese Empire.<sup>10</sup> Taiwan would not return to Chinese rule until 1945 at the end of World War II. Under fifty years of Japanese colonial rule, the local Taiwanese population greatly benefited from the introduction of improvements to agriculture, medicine, sanitation, increased education and literacy levels (in Japanese), as well as heretofore unknown levels of bureaucratic efficiency and legal modernization.<sup>11</sup> Yet the local population also suffered a variety of political, civil, and economic abuses ranging from lack of representation in the Japanese Diet and media censorship to restrictive government monopolies and land expropriation.<sup>12</sup> The colonial period of Taiwan has been well documented in the fields of history and literary studies; however, transitional justice and historical justice theories and mechanisms are rarely applied to the study of the island's history prior its retrocession to the Republic of China in 1945.<sup>13</sup> This governmental, and even scholarly 'disinterest' in the Japanese colonial period is particularly problematic when confronting the treatment of Taiwan's aboriginal population and the expropriation of aboriginal

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<sup>10</sup> Zhong Ri jiang he tiao yue 中日講和條約 (Treaty of Shimonoseki) arts 3 and 4, ZHONG HUA MIN GUO WAI JIAO BU BAO CUN ZHI QIAN QING TIAO YUE XIE DING 中華民國外交部保存之前清條約協定 [CH'ING DYNASTY TREATIES AND AGREEMENTS PRESERVED BY THE MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF CHINA (TAIWAN)] (1895), <http://npmhost.npm.gov.tw/ttscgi/npmkm3/npmcpkm?@20^1331330819^107^^62^1@@@1522811448> (last visited Jun 20, 2017).

<sup>11</sup> See, for example, TAY-SHENG WANG, *LEGAL REFORM IN TAIWAN UNDER JAPANESE COLONIAL RULE, 1895-1945: THE RECEPTION OF WESTERN LAW* (2000); Harry J. Lamley, *Taiwan under Japanese Rule, 1895-1945: The Vicissitudes of Colonialism*, in *TAIWAN: A NEW HISTORY* 201–260 (Murray A Rubinstein ed., 2nd ed. 2015).

<sup>12</sup> CAROLINE HUI-YU TSAI, *TAIWAN IN JAPAN'S EMPIRE-BUILDING: AN INSTITUTIONAL APPROACH TO COLONIAL ENGINEERING* (2008).

<sup>13</sup> The main Anglophone studies of human rights and transitional justice all explicitly leave out consideration of Taiwan's colonial period, see Wu, *supra* note 6; Daniel Bowman, *Righting the Wrongs of the Past? The Human Rights Policies of Chen Shui-bian and Ma Ying-jeou*, in *TAIWAN SINCE MARTIAL LAW: SOCIETY, CULTURE, POLITICS, AND ECONOMY* 485–526 (David Blundell ed., 2012); Hwang, *supra* note 6.

lands by the Japanese.<sup>14</sup> As a result, many of the century-old transitional and historical justice issues of Taiwan's indigenous communities remain unresolved.<sup>15</sup>

The importance of the Taiwan's Japanese colonial heritage is often overshadowed by the fact that most studies of transitional justice in Taiwan begin with the second historical period, the return of the island to Chinese control at the end of World War II.<sup>16</sup> More specifically, transitional justice discourse in post-democratization Taiwan rather myopically focuses on the policies and actions of the KMT during the authoritarian period at the expense of a more comprehensive approach to historical justice seeking to address wrongs spanning two different regime types and for which there were numerous, often overlapping victims. Given the length of the Japanese colonial period and many positive contributions to Taiwanese society via Japanese administration, when Taiwan returned to the KMT led government of the Republic of China, there was good deal of uncertainty and identity crisis among Taiwan's population, as well as uncertainty and mistrust among the mainland Chinese citizenry who had just endured several

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<sup>14</sup> Scott Simon, *Making Natives: Japan and the Creation of Indigenous Formosa*, in JAPANESE TAIWAN: COLONIAL RULE AND ITS CONTESTED LEGACY 75–92 (Andrew Morris ed., 2015); Lee Ming-cheng, *Yuan zhu min she hui sheng huo fa zhan yu zhuan xing zheng yi* 原住民社會生活發展與轉型正義 [Transitional Justice and the Development of Taiwanese Indigenous Peoples' Social Life], 6 TAIWAN YUAN ZHU MIN ZU YAN JIU XUE BAO 台灣原住民族學報 J. TAIWAN INDIG. STUD. ASSOC. 97–120 (2016).

<sup>15</sup> JOLAN HSIEH, COLLECTIVE RIGHTS OF INDIGENOUS PEOPLES: IDENTITY-BASED MOVEMENT OF PLAIN INDIGENOUS IN TAIWAN (2006); Jolan Hsieh & Ming-chi Wu, *Zhuan xing zheng yi de si kao yu shi jian* 轉型正義的思考與實踐 [Perspectives on Taiwanese Indigenous Peoples' Transitional Justice], 6 TAIWAN YUAN ZHU MIN ZU YAN JIU XUE BAO 台灣原住民族學報 J. TAIWAN INDIG. STUD. ASSOC. 1–29 (2016).

<sup>16</sup> Hwang, *supra* note 6 at 169; Agnes Schick-Chen, *Introduction: Coming to Terms with the Past on Both Sides of the Taiwan Strait: Historical and Political Context*, in JUSTICE RESTORED? BETWEEN REHABILITATION AND RECONCILIATION IN CHINA AND TAIWAN (2012); SYLVIA LI-CHUN LIN, REPRESENTING ATROCITY IN TAIWAN: THE 2/28 INCIDENT AND WHITE TERROR IN FICTION AND FILM (2007).



brutal years of war with Japan.<sup>17</sup> Furthermore, the draining of Taiwan's resources back to the mainland to assist the KMT's war against the communist forces of Mao Zedong (毛澤東), unfair government monopolies, and poor local administration led to mounting tensions between the local Taiwanese population and the newly arrived mainland population of soldiers, policemen, and bureaucrats.<sup>18</sup>

Tensions reached a climax on 27 February 1947, when a Taiwanese woman illegally selling cigarettes suffered abuse at the hands of the government's Tobacco Monopoly inspectors.<sup>19</sup> Taiwanese present at the incident threatened the inspectors, one of whom drew a firearm and killed one Taiwanese man. The following day, the local Taiwanese population stormed the police headquarters and riots and protests broke out island wide. In response, the national government dispatched soldiers from the mainland to quell the populace. Over the next few months, the mainland soldiers and police forces assaulted, imprisoned, and killed thousands of Taiwanese.<sup>20</sup> The exact numbers of Taiwanese killed during the months following the initial event remains unknown. According to the report by the Taiwan Provincial Garrison Command issued shortly after the event, 398 persons were killed, 72 were still missing, and 2131 were injured; however, subsequent reports give figures ranging from 5000 to 28000 deaths.<sup>21</sup> The 228 Incident (二二八事件) as it is now known, lasted for only a few months, but the scale of abuses suffered by the Taiwanese remains a painful source of social division between the mainlanders

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<sup>17</sup> STEVEN E. PHILLIPS, *BETWEEN ASSIMILATION AND INDEPENDENCE: THE TAIWANESE ENCOUNTER NATIONALIST CHINA, 1945-1950* 41–44 (2003).

<sup>18</sup> A TRAGIC BEGINNING: THE TAIWAN UPRISING OF FEBRUARY 28, 1947, 73–99 (Tse-han Lai, Ramon H. Myers, & Wei Wou eds., 1991).

<sup>19</sup> *Id.* at 102–103.

<sup>20</sup> *Id.* at 141–167.

<sup>21</sup> By 2005, the 228 Memorial Foundation issued compensations for 681 deaths, 177 disappearances, and 1294 imprisonments. See Wu, *supra* note 6 at 90.



(those ethnic Chinese arriving from the Chinese mainland after 1945) and Taiwanese even today.<sup>22</sup>

By 1948, the KMT was losing the civil war on the mainland to the communist forces of Mao Zedong. President Chiang Kai-shek (蔣介石) along with the ROC legislature promulgated the *Temporary Provisions Effective During the Period of Communist Rebellion* (hereafter, Temporary Provisions),<sup>23</sup> which instituted a state of emergency, gave the president extraordinary powers, and suspended the vast majority of civil and political rights enshrined within the 1947 Constitution of the Republic of China (hereafter, ROC constitution). Soon after, however, the KMT government fled the mainland, establishing a ‘government in exile’ on Taiwan with the intent of reclaiming the mainland in the future. Over the next forty years, martial law and Temporary Provisions were renewed indefinitely, thus providing legitimacy and legality to the KMT’s authoritarian rule over the island. This became popularly known as the White Terror period (*bai se kong bu* 白色恐怖, 1949-1987) and represents the third historical era in which state sanctioned human rights abuses were inflicted upon the population of Taiwan.<sup>24</sup> Unlike the 228 Incident, however, the victims during this period were not limited to Taiwanese and the indigenous peoples, but also included thousands of mainlanders suspected of spying or being communist sympathizers. Under the auspices martial law, numerous minor criminal offenses

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<sup>22</sup> Chris Fuchs, 30 YEARS AFTER END OF MARTIAL LAW, SCARS FROM TAIWAN’S “WHITE TERROR” REMAIN NBC NEWS (2017), <http://www.nbcnews.com/news/asian-america/40-years-after-end-martial-law-scars-taiwan-s-white-n725251>.

<sup>23</sup> LEGISLATIVE YUAN, DONG YUAN KAN LUAN SHI QI LIN SHI TIAO KUAN 動員戡亂時期臨時條款 [TEMPORARY PROVISIONS EFFECTIVE DURING THE PERIOD OF COMMUNIST REBELLION] (1948).

<sup>24</sup> SU RUI-CHIANG, BAISE KONGBU ZAI TAIWAN: ZHANHOU TAIWAN ZHENGZHI ANJIAN ZHI CHUZH 白色恐怖在台灣: 戰後台灣政治之處置 (2014).

were re-categorized as ‘political’ offenses.<sup>25</sup> This allowed the KMT to actively, and legally, employ courts-martial to try outspoken civilians critical of the KMT’s rule and limit their options for appeal. The provisions of martial law further allowed the KMT government to amass great wealth through expropriation of private lands and the development of government monopolies at the expense of local businesses.<sup>26</sup> Although no official report on the White Terror period has ever been commissioned, surveys of extant and declassified case records allow scholarly estimates of 140,000 civilians tried in courts-martial between 1949-1987 resulting in tens of thousands of imprisonments, thousands of cases of property confiscation, and roughly 3,000-4,000 executions.<sup>27</sup> In addition to this, there are numerous ‘unsolved’ cases of murders or disappearances of outspoken opponents of the KMT regime.

Though there have been numerous human rights abuses in Taiwan’s past, during the island’s multiple transitions from a colonialism to post-colonialism and from an authoritarian to democratic government, the national government in Taiwan, particularly in the initial two decades of democratic rule, took a very conservative stance towards creation and application of transitional justice mechanisms via the formal legislative process. This is partially due to the KMT’s continued dominance in Taiwan’s newly minted democratic political landscape. Despite three transfers of executive power between the KMT and DPP since democratization occurred, there still exists an underlying public dissatisfaction with the formal legislative responses of the national government. The remainder of this Article examines the early legislative conservatism by comparing the scope and language of transitional justice legislation passed by the KMT

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<sup>25</sup> Peng Ming-min, *Political Offences in Taiwan: Laws and Problems*, CHINA Q. 471–493 (1971).

<sup>26</sup> Joseph Bosco, *Taiwan Factions: Guanxi, Patronage, and the State in Local Politics*, in THE OTHER TAIWAN: 1945 TO THE PRESENT 114–144, 131–133 (Murray A Rubinstein ed., 1994).

<sup>27</sup> Hwang, *supra* note 6 at 170.

dominated legislature from 1987-2016 to the transitional justice discourse of the DPP and the subsequent legislative bills introduced by the DPP in the early months of the DPP dominated legislature beginning in 2016.

### III. THE FIRST WAVE: TRANSITIONAL JUSTICE UNDER THE KMT DOMINATED LEGISLATURE

#### A. Democratization and KMT Attempts to Rectify (and Dodge) its Past Wrongs

Despite Taiwan's economic success and increased standard of living in the 1980s, the KMT government found that after nearly forty years of one-party rule its domestic support had begun to wane and intra-party factionalism increasingly threatened party unity.<sup>28</sup> The legitimacy and political dominance of the authoritarian KMT were further eroded by the results of limited elections at the national and local levels which showed increased political gains by members of the fledgling 'opposition', known collectively as *dangwai* (黨外 lit. outside the party).<sup>29</sup> More importantly, its international support became evermore tenuous. Countries like the United States which formally recognized the People's Republic of China, yet continued to both politically and economically support the de facto existence of the 'free' ROC government in Taiwan, found it increasingly difficult to justify to their own electorate continued support of a one-party authoritarian government masquerading as a democracy.<sup>30</sup> For these and other reasons, President Chiang Ching-kuo (蔣經國), the son of Chiang Kai-shek, established a basic plan for lifting

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<sup>28</sup> LINDA CHAO & RAMON H. MYERS, *THE FIRST CHINESE DEMOCRACY: POLITICAL LIFE IN THE REPUBLIC OF CHINA ON TAIWAN* 120–127 (1998).

<sup>29</sup> STEVEN LEVITSKY & LUCAN A. WAY, *COMPETITIVE AUTHORITARIANISM: HYBRID REGIMES AFTER THE COLD WAR* 309–318 (2011); Linda Chao & Ramon H. Myers, *How Elections Promoted Democracy in Taiwan under Martial Law*, *CHINA Q.* 387–409 (2000); HUNG-MAO TIEN, *THE GREAT TRANSITION: POLITICAL AND SOCIAL CHANGE IN THE REPUBLIC OF CHINA* 97–103 (1989).

<sup>30</sup> JOHN F. COPPER, *TAIWAN: NATION-STATE OR PROVINCE?* 200 (6 ed. 2013).

martial law and transforming Taiwan into constitutional democracy. He died in 1986, however, and the task of refining and implementing these plans whilst simultaneously protecting the assets and ensuring the continued existence of the KMT throughout the process of democratization fell to then vice-president Lee Teng-hui (李登輝).

As Taiwan's first native-born president, Lee was often able to mediate concerns of the KMT and the local Taiwanese population during the transitional process.<sup>31</sup> Under his leadership, martial law was formally lifted in 1987 and later in 1991 the infamous Temporary Provisions were abolished.<sup>32</sup> The removal of these restrictive laws and policies opened the door for greater participation by the public, allowed for the formation of new political parties, and loosened restrictions on the media. Furthermore, an interpretation by the Constitutional Court required all officials originally elected in 1947 and 1948 on the mainland to retire,<sup>33</sup> and a subsequent series of constitutional amendments paved the way for the first round of full elections to be held since 1948.<sup>34</sup> Through these political and constitutional changes, Taiwan's government peacefully transitioned from a one-party authoritarian state to a constitutional democracy.<sup>35</sup> Yet, the spectre

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<sup>31</sup> Ya-li Lu, *Lee Tung-hui's Role in Taiwan's Democratization: A Preliminary Assessment*, in *ASSESSING THE LEE TUNG-HUI LEGACY IN TAIWAN'S POLITICS: DEMOCRATIC CONSOLIDATION AND EXTERNAL RELATIONS* 53–72, 55–61 (Bruce J. Dickson & Chien-min Chao eds., 2002).

<sup>32</sup> The process of lifting martial law began with Chiang Ching-kuo, but was implemented by Lee. See *Id.* at 55.

<sup>33</sup> Judicial Yuan Interpretation No. 261 (21 June 1990).

<sup>34</sup> CHENG-TAO HSIEH (謝正道), *ZHONGHUA MINGUO XIUXIAN SHI 中華民國修憲史* (HISTORY OF CONSTITUTIONAL REFORM IN THE REPUBLIC OF CHINA) 213–220 (2 ed. 2005).

<sup>35</sup> Although the process was relatively peaceful, it was not necessarily smooth. Protests, charges of continued corruption, etc haunted Taiwan's democratic transition. Some even argue that due to the continued political dominance of the KMT after the transition, Taiwan has yet to *fully* transition. See, for example, Peter R. Moody Jr., *Some Problems in Taiwan's Democratic Consolidation*, in *ASSESSING THE LEE TUNG-HUI LEGACY IN TAIWAN'S POLITICS: DEMOCRATIC CONSOLIDATION AND EXTERNAL RELATIONS* 27–50 (Bruce J. Dickson & Chien-min Chao eds., 2002); Kharis Templeman, Larry Diamond & Yun-han Chu, *Taiwan's Democracy Under Chen*

of the past was never far behind and the KMT now faced the necessity of winning free elections via an electorate which it had oppressed for nearly forty years.

### B. Party Protectionism and the National Security Act of 1987

As democratization and free elections loomed on the horizon, the KMT increasingly considered the political, as well as legal implications of the human rights abuses perpetrated by its government during the previous forty years. Prior to the lifting martial law in 1987, the government carried out two actions attempting to insulate the KMT from the potential negative effects of its authoritarian past. First, due to the negative public opinion towards the KMT's use of military courts to sentence political opponents to lengthy prison sentences, life imprisonment or even death, on 14 July 1987, the Ministry of Defense announced a partial amnesty (reduction of sentences and/or restoration of rights) for 237 political prisoners.<sup>36</sup> Critics of this amnesty, however, quickly pointed out its limitations. Under existing laws, individuals convicted of sedition or other political offenses were barred from holding public office and barred from many professions such as civil servants, lawyers and medical doctors.<sup>37</sup> Thus, although they could now vote in elections, many of the former authoritarian regime's most ardent opponents were excluded for life from holding government posts as a result of their previous convictions.

The 237 individuals covered under the 'token' partial amnesty represent but a few of the tens of thousands of civilians tried for political reasons in military courts and subsequently imprisoned or executed during the White Terror period. For those remaining victims, the all-

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*Shui-bian*, in *TAIWAN'S DEMOCRACY CHALLENGED: THE CHEN SHUI-BIAN YEARS 1–28* (Yun-han Chu, Larry Diamond, & Kharis Templeman eds., 2016).

<sup>36</sup> International Committee for Human Rights in Taiwan, *Taiwan ends Martial Law after 38 Years but...no dancing in the streets*, TAIWAN COMMUNIQUÉ, 1987, at 1–6.

<sup>37</sup> *Id.* at 6.

important Article 10 of the Martial Law Act would go into effect once martial law was lifted.<sup>38</sup>

Under the ROC Constitution, only active duty military personnel may be tried in a military court;<sup>39</sup> however, Articles 8 and 9 of the Martial Law Act provide a list of offenses for which civilians may be tried by courts-martial during times of emergency.<sup>40</sup> Article 10 of this same act was originally designed as a legal safeguard for the restoration of individual rights once the state of emergency was suspended by the government. Specifically, it provided that civilians sentenced for crimes, or currently undergoing investigation or trial via military courts were entitled to request a retrial or reconsideration by civilian courts once martial law is lifted.<sup>41</sup>

Fearful of the potential volume of accusations and appeals, on the eve of the repeal of martial law, the KMT dominated legislature passed the 1987 National Security Act (國家安全法).<sup>42</sup> This act provided, *inter alia*, an article designed to limit appeals by civilians sentenced in courts-martial during the authoritarian period. Due to its importance, I have translated the entirety of Article 9 below.

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<sup>38</sup> LEGISLATIVE YUAN, JIE YAN FA 戒嚴法 [MARTIAL LAW ACT] art 10 (1934, amended 1948).

<sup>39</sup> NATIONAL ASSEMBLY, ZHONG HUA MIN GUO XIAN FA 中華民國憲法 [CONSTITUTION OF THE REPUBLIC OF CHINA] art 9 (1946).

<sup>40</sup> LEGISLATIVE YUAN, *supra* note 39 at arts 8 and 9.

<sup>41</sup> *Id.* at art 10. (“Upon the day following the repeal of martial law, all sentences made under Article 8 and Article 9 [of this law], may be appealed in accordance with the law” 第八條第九條之判決，均得依解嚴之翌日起，依法上訴.)

<sup>42</sup> LEGISLATIVE YUAN, GUO JIA AN QUAN FA 國家安全法 [NATIONAL SECURITY ACT] (1987). Full text of the National Security Law can be found on the Legislative Yuan website at: <http://lis.ly.gov.tw/lglawc/lawsingle?0^898106C4038134998106C0E58103B18107C023811389A186C403> (last visited 17 January 2017).

Original	English Translation
<p>第九條：</p> <p>戒嚴時期戒嚴地域內，經軍事審判機關審判之非現役軍人刑事案件，於解嚴後依左列規定處理：</p> <p>一、 軍事審判程序尚未終結者，偵查中案件移送該管檢察官偵查，審判中案件移送該管法院審判。</p> <p>二、 刑事裁判已確定者，不得向該管法院上訴或抗告。但有再審或非常上訴之原因者，得依法聲請再審或非常上訴。</p> <p>三、 刑事裁判尚未執行或在執行中者，移送該管檢察官指揮執行。</p>	<p>Article 9:</p> <p>Once martial law is repealed, criminal cases of civilians tried by courts-martial during the period of martial law shall be handled as follows:</p> <p>9(1) Those [individuals] whose military trial proceedings have not concluded: cases under investigation are to be transferred to civil prosecutors for investigation and cases at trial are to be transferred to civilian courts for trial.</p> <p>9(2) Those [individuals] whose criminal sentences have already been decided may not appeal or complain to civil courts. However, those with grounds for retrial or extraordinary appeal may in accordance to the law petition for retrial or extraordinary appeal.</p> <p>9(3) Those [individuals] whose criminal sentences have not begun or who are currently serving their sentences are to be transferred to, and administered by civilian prosecutors.</p>

The implications of this one article for Taiwan's post-transition engagement with human rights abuses were, and are still, tremendous. First, paragraphs 1 and 3 rightly transfer control of civilian investigations, trials, and prisoners to civil jurisdiction. Though certainly fewer than in previous decades, by the mid-1980s there were still numerous civilians imprisoned and awaiting trial in military courts for political crimes.<sup>43</sup> The transfer of such cases to civil courts was an initial step to demilitarize society. More problematic, however, paragraph 2 of the National

<sup>43</sup> Associated Press, TAIWAN ENDS 4 DECADES OF MARTIAL LAW THE NEW YORK TIMES (1987), <http://www.nytimes.com/1987/07/15/world/taiwan-ends-4-decades-of-martial-law.html> (last visited Jun 20, 2017). (citing the Taiwan Ministry of Defense stating that it was releasing 23 individuals and only 30 dissidents remained in custody).



Security Act nullified Article 10 of the original Martial Law Act which explicitly provided an automatic right of appeal for any and all convictions of non-military persons under courts-martial during times of emergency. Thus, paragraph 2 of Article 9 in the National Security Act effectively precluded civilians tried for political offenses under martial law or their families from appealing their convictions to civil courts. By passing this law, the KMT not only insulated itself from potential retribution and legal accountability, but also severely restricted the right of tens of thousands of citizens to question the legality of military trials conducted against civilians during the White Terror period.

The constitutionality of the National Security Act's Article 9 was immediately questioned by three civilians who had previously been convicted for political offenses by military courts, and their request for a constitutional interpretation went all the way to the Constitutional Court in 1987.<sup>44</sup> The Court, staffed by KMT appointees, sided with the government and confirmed the constitutionality of the legislation.<sup>45</sup> The Court held, *inter alia*, that due to the lengthy period of martial law, inaccessibility of documents related to individual case reports deemed sensitive to national security, and the need to retain the stability and consistency of the judicial process, the reinvestigation and retrial of all such cases were simply beyond the capacity of civilian courts.<sup>46</sup> Thus, by arguing for consistency and stability, the Court recused itself from involvement in early efforts to promote transitional justice in Taiwan. Furthermore, by not questioning the legality of the acts or judgments called into question by the case, through *Interpretation No. 272* the Court tacitly validated and legitimated the human rights abuses perpetrated by KMT officials during

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<sup>44</sup> Judicial Yuan Interpretation No. 272 (18 January 1991). See, [http://www.judicial.gov.tw/constitutionalcourt/EN/p03\\_01.asp?expno=272](http://www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=272) (last visited 15 August 2016).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

the martial law period. Although the post-transition KMT dominated legislature would later pass three transitional justice acts in the 1990s, Hwang Jau-yuan argues that the passage of the National Security Act and its judicial support clearly set the restrictive tone for transition justice discourse and practice during the early years of post-authoritarian Taiwan.<sup>47</sup>

### C. The Conservative Language of Transitional Justice Legislation under the KMT

Although the KMT initially feared retribution from the populace, the party was still able to consistently win democratic elections. The KMT, therefore, found itself in the position of controlling both the legislature (1987-2016) and presidency (1987-2000), and by extension controlling the official government position on transitional justice matters during the initial two decades of democracy in Taiwan. During this time, the KMT dominated legislature introduced three important, but limited, pieces of legislation related to transitional justice. The conservative language and narrow scope of these laws highlight the constraints placed on transitional justice mechanisms by local post-transition political conditions in which the former authoritarian party retained much of its political power. Although the limitations of these initial measures drew much criticism from the victims of the White Terror period and left a feeling of incompleteness of transitional justice in Taiwan, there was little that could be done in terms of formal legislative approaches to transitional justice while the KMT held its dominance in the legislature. This section analyzes the limitations of the KMT promulgated laws in chronological order of their passage.

The first piece of post-transition legislation specifically aimed at past abuses was the 1995 Act Governing the Recovery of Damage of Individual Rights During the Period of Martial

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<sup>47</sup> Hwang, *supra* note 6 at 171.

Rule (hereafter 1995 Recovery Act).<sup>48</sup> In terms of scope of applicable cases, this Act is specifically limited to only cover individual cases occurring during the period of 20 May 1949 to 14 July 1987 in which the defendants were either charged but found not guilty in courts-martial or were found guilty but can subsequently prove their confessions were coerced.<sup>49</sup> In addition to monetary reparations for those who can prove their trials were improperly carried out,<sup>50</sup> and further provides for the full restoration of individual rights allowing affected persons to hold civil office or re-enter professional fields such as medicine, law, and education.<sup>51</sup> Though this Act provides some quantum of reparation for the abuses of the past, its language necessarily constrains the applicable cases. Furthermore, while some confessions may be proven to have been coerced and their subsequent verdicts determined to be unjust, the language of the Act establishes this as an administrative failing, not an illegal or immoral act.

The language of this Act limits the scope of transitional justice in many ways. First, the Act only covers cases occurring during the period of 1949-1987, thereby excluding the victims of the 228 Incident. Second, nowhere in the Act is the legality of the courts-martial system utilized against civilians during martial law ever questioned.<sup>52</sup> The Act is silent on the question of fact-finding for the purpose of assigning responsibility and accountability for the incidents occurring during the White Terror period.

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<sup>48</sup> LEGISLATIVE YUAN, JIE YAN SHI QI REN MIN SHOU SUN QUAN LI HUI FU TIAO LI 戒嚴時期人民受損權利回復條例 [ACT GOVERNING THE RECOVERY OF DAMAGE OF INDIVIDUAL RIGHTS DURING THE PERIOD OF MARTIAL RULE] (1995). Full text of the 1995 Recovery Act can be found on the Legislative Yuan website at: <http://lis.ly.gov.tw/lglawc/lawsingle?0^898106CC038133818106C0E58103A98926C093C10399907C403>. (last visited 17 January 2017).

<sup>49</sup> *Id.* at art 1.

<sup>50</sup> *Id.* at art 6.

<sup>51</sup> *Id.* at art 3.

<sup>52</sup> Hwang, *supra* note 6 at 172.

The second major piece of transitional justice legislation was the 1995 February 28 Incident Disposition and Compensation Act (hereafter 228 Compensation Act).<sup>53</sup> For nearly forty years, discussion of the 228 Incident has been suppressed by the KMT; yet, with democratization and the re-establishment of civil freedoms of speech and press, the KMT found itself unable to escape the influence of this event.<sup>54</sup> Unlike the ‘legal’ use of courts-martial and suppression of individual rights under martial rule, the KMT government brutality against the Taiwanese population in the aftermath of the 228 Incident lacked any legal basis. The memory of the event continued to be a heavily contentious issue dividing the population between those living in Taiwan prior to the 1945 retrocession and those arriving from the mainland after the retrocession. This Act, therefore, was specifically aimed at the victims of the 228 Incident, and can be viewed as an attempt by president Lee Tung-hui to close the identity gap amongst Taiwan’s population. This is reflected in the initial article of the Act that provides the rationale for the legislation which is “to cause citizens to understand the facts of the incident, to heal historical wounds, and to promote ethnic unity and harmony”.<sup>55</sup> Such a statement is tantamount to an acknowledgment of the individual and social harm inflicted by the incident, yet its efficacy is again limited by the carefully crafted language which does not offer any recognition of those individuals actually responsible for its occurrence. Here again, the language of the legislation shelters individual

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<sup>53</sup> LEGISLATIVE YUAN, ER ER BA SHI JIAN CHU LI JI BU SHANG TIAO LI 二二八事件處理及補償條例 [FEBRUARY 28 INCIDENT DISPOSITION AND COMPENSATION ACT] (1995). Full text of the 228 Compensation Act can be found on the Legislative Yuan website at: <http://lis.ly.gov.tw/lglawc/lawsingle?0^898106D0038133818106C0E58103819986C0238113A19146C403>. (accessed 17 January 2017).

<sup>54</sup> Wang and Ku, *supra* note 6 at 10–11.

<sup>55</sup> LEGISLATIVE YUAN, *supra* note 48 at art 1. (使國民瞭解事件真相, 撫平歷史傷痛, 促進族群融和).

members of the KMT from criminal or civil liability or even official acknowledgment of their participation.

In terms of the actual provisions for promoting transitional justice, the Act provides for the establishment of a schedule reparation payments,<sup>56</sup> a system to provide the restitution of honor for victims or the descendants of those killed, wounded, tortured, detained, imprisoned, and compensation for individuals or their families who had property damaged or confiscated during the period of state sanctioned violence.<sup>57</sup> Unlike the previous piece of legislation, however, which primarily focused on reparations, the 228 Compensation Act provides for the establishment of additional formal transitional justice mechanisms. Article 3, for example, provides for the establishment of the 228 Incident Memorial Foundation that is to be governed by a selection of scholars, civil activists, as well as victims of the incident (or their descendants). Individual applications for reparations and restitution of honor are submitted directly to the Foundation which in turn investigates each claim and administers financial reparations.<sup>58</sup> Furthermore the Foundation promotes truth-finding through research exercises and provides educational awareness of the incident via events and publications.<sup>59</sup> Article 4 of the Act provides an additional measure of commemorative transitional justice by confirming the annual date of February 28 as a national holiday, Peace Memorial Day (和平紀念日).

Like the previous piece of legislation, however, the 228 Compensation Act is not free from criticism. The very title of the Act created controversy as it uses the term *bu chang* (補償) for “compensation,” which in Taiwanese administrative law implies a form compensation for

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<sup>56</sup> *Id.* at art 7.

<sup>57</sup> *Id.* at art 6.

<sup>58</sup> *Id.* at arts 6 and 7.

<sup>59</sup> *Id.* at art 11.

harms resulting out of a legitimate process or procedure.<sup>60</sup> This word choice reflects the continued stance of the KMT-dominated legislature that the ‘wrongness’ of the abuses were linked to individualized cases of administrative failings of an otherwise legal and legitimate system. Related to this, the KMT’s enduring platform of legality of its governance methods during the 228 Incident is also evident in the fierce legislative debates over the inclusion of the phrase “the government should apologize to all citizens.” In the end, however, inclusion of the phrase was voted down.<sup>61</sup> The possible inclusion of such an explicit statement in a piece of legislation could be seen by the KMT as an admission of wrongdoing which could undermine its continued stance over the legitimacy of its government prior to and during the martial law period. Thus, while the 228 Compensation Act clearly differs the 1995 Recovery Act by providing for reparations *as well as* establishing a foundation tasked with specific transitional justice goals and the assignment of 28 February as a national holiday, the language of both Acts precludes ascribing any liability or blame to the KMT or any individual associated with the authoritarian government.

The final major piece of transitional justice legislation passed by the KMT dominated legislature was the 1998 Compensation Act for Improper Trials on Charges of Sedition and Espionage during the Martial Law Period (hereafter 1998 Compensation Act).<sup>62</sup> Hwang argues that this Act was the direct result of public dissatisfaction with the lack of efforts by the KMT government/legislature to properly address the abuses occurring during the White Terror

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<sup>60</sup> Wang and Ku, *supra* note 6 at 12.

<sup>61</sup> *Id.* at 11.

<sup>62</sup> LEGISLATIVE YUAN, JIE YAN SHI QI BU DANG PAN LUAN JI FEI DIE SHEN PAN AN JIAN BU SHANG TIAO LI 戒嚴時期不當叛亂暨匪諜審判案件補償條例 [COMPENSATION ACT FOR IMPROPER TRIALS ON CHARGES OF SEDITION AND ESPIONAGE DURING THE MARTIAL LAW PERIOD] (1998). Full text of the 1998 Compensation Act can be found on the Legislative Yuan website at: <http://lis.ly.gov.tw/lglawc/lawsingle?0^898106D4038133818106C0E58103A98946C453C903B1B9A6D003>. (last visited 17 January 2017).

period.<sup>63</sup> Despite the public pressure for more comprehensive transitional justice legislation, however, the 1998 Compensation Act follows the KMT's trend of legislating compensatory acts while precluding any inquiries over the legitimacy of KMT rule or assigning any liability to specific individuals. Like the 228 Compensation Act, this Act provides for the establishment of another Memorial Foundation comprised of scholars, civilians, judges, and government representatives and tasked with administering the applications, investigations of claims, and payments to victims or their families.<sup>64</sup> The legislation is quite limited in its scope as it only covers individuals tried and convicted of sedition (*pan luan* 叛亂) or espionage (*fei die* 匪諜) during the martial law period.<sup>65</sup> This limitation is further evidenced by a preclusion of individuals who have already received any form of compensation via the 228 Compensation Act or who have received some measure of compensation via the administrative appeal system for wrongful conviction.<sup>66</sup> The same article also bars any individual whose conviction could be upheld after reconsideration from compensation.

All three pieces of transitional justice legislation represent attempts by the KMT to formally address its past wrongs primarily through legislating reparations to victims. However, due to their continued control of the legislature, the KMT directly controlled the crafting of transitional legislation and were able further insulate themselves from any official liability for past abuses during their authoritarian rule. Each law contains the following limitations. First, the scope of each law is temporally limited with explicit language confining the applicability of each law's provisions to a specific period of time. All three are limited to the period of KMT rule following the retrocession in 1945. As such, harms and losses occurring during the Japanese

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<sup>63</sup> Hwang, *supra* note 6 at 172.

<sup>64</sup> LEGISLATIVE YUAN, *supra* note 59 at art 3.

<sup>65</sup> *Id.* at art 2.

<sup>66</sup> *Id.* at art 3.



colonial period are not considered or applicable. This precludes numerous claims of Taiwan's indigenous communities. Second, the primary focus of all three laws is on reparations as a means of reconciliation.<sup>67</sup> The 228 Compensation Act and 1995 Recovery Act both provide for commemorative forms of transitional justice, such as the establishment of memorial foundations and educational promotion for events occurring during KMT rule; however, the function of knowledge is to understand the events and assist the victims without consideration of responsibility. This is related to the third restriction, which is a limitation on ascertaining the 'truth'. Unlike many transitional societies, the KMT never established a Truth and Reconciliation Committee to determine the sources of abuse and the responsibility. To do so, would call into question the legitimacy of state-sanctioned violence during the authoritarian period. As such, there has never been a single individual prosecuted for acts during the period from 1945-1987. Instead, what each law does is to acknowledge the loss and/or harm inflicted on the civilian populace. Thus, while the transitional justice legislation passed by the KMT did provide financial benefits to many of those who had suffered under KMT oppression, their language was crafted in such a way as to elude consideration of the accountability or criminal liability of the perpetrators.

#### D. Continued Public Dissatisfaction with KMT-led Transitional Justice: 2000-2016

The early years of democratic rule in Taiwan saw many positive changes, yet lurking the background was the ever-present spectre of the past and a palpable public dissatisfaction with state of KMT-dominated transitional justice practice. In 2000, the dominance of the KMT was tested when the DPP candidate Chen Shui-bian (陳水扁) won the presidential election, and was

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<sup>67</sup> Jemima Garcia-Godos, *Reparations*, in AN INTRODUCTION TO TRANSITIONAL JUSTICE 177–200, 182–185 (Olivera Simic ed., 2017).

re-elected by a razor thin margin in 2004. Yet, despite the success of the DPP in gaining the presidency, the party was never able to eclipse the KMT coalition majority (known as the pan-blue coalition) in the legislature.<sup>68</sup> As a result, Chen Shui-bian's two terms in office were fraught with persistent policy gridlock between the DPP-held executive and KMT-held legislature, with latter opposing nearly all government legislative proposals.<sup>69</sup>

There were, however, some small legislative victories of DPP-led transitional justice. First, in 2007 the title of the 228 Compensation Act was altered by amendment. As mentioned previously, the former title utilized the term *bu chang* for "compensation," indicating an administrative compensation for harm resulting from a legitimate act. With very little media attention or legislative debate, the amendment altered the title term used to *pei chang* (賠償), which denotes a form of compensation for a harm resulting from an illegal act.<sup>70</sup> This extremely subtle shift in title subtly implies that the acts perpetrated under the guise of government sanctioned legality were in fact *illegal* acts for which the government at the time and its personnel should be responsible. Unfortunately, Chen had little power or influence over the judiciary and other government offices and this change in title and its significance went unnoticed and under-appreciated.

Second, in 2003 and 2007, the Constitutional Court issued two interpretations concerning the constitutionality of victim-category exclusions enshrined in Taiwan's existing transitional

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<sup>68</sup> Shiow-duan Hawang, *Executive-Legislative Relations under Divided Government*, in *TAIWAN'S DEMOCRACY CHALLENGED: THE CHEN SHUI-BIAN YEARS 123–144*, 123 (Yun-han Chu, Larry Diamond, & Kharis Templeman eds., 2016).

<sup>69</sup> Thomas Weisheng Huang, *The President Refuses to Cohabit: Semi-Presidentialism in Taiwan*, 15 PAC. RIM LAW POLICY J. 375–402 (2006).

<sup>70</sup> Legislative Yuan, *Er er ba shijian chuli ji peichang tiaoli de san du* 二二八事件處理及賠償條例的三讀 [Third Reading of the February 28 Incident Disposition and Compensation Act], 96 LIFA YUAN GONGBAO 立法院公報 [LEGISLATIVE YUAN GAZETTE] 93, 93 (2007).

justice legislation. In 2003, the Court issued *Interpretation No. 567* which held that despite the extraordinary circumstances of martial law the military courts' continued use of rehabilitative labor for civilians after the completion of their prison sentences during this period violated Article 8 of the ROC Constitution.<sup>71</sup> Furthermore, the original implementation of the 1995 Recovery Act in conjunction with the 1987 National Security Act restricted such individuals from receiving compensation. This ruling, therefore, expanded the scope of the 1995 Recovery Act and simultaneously implicitly labelled the KMT government's use of indefinite rehabilitation detention during the martial law period as unconstitutional. Following this, in 2007 the Court issued *Interpretation No. 624* which held that precluding civilians wrongfully convicted in military courts from receiving compensation was unconstitutional. The original wording of the 1987 National Security Act only provided for compensation to be paid out to those who were detained but could prove they were not guilty, and this was limited to those who had not had their sentence carried out. In addition, the wording of the 1995 Recovery Act further precluded individuals convicted in courts-martial and who had completed their sentences from equal reparation payments.<sup>72</sup> Therefore, the Court ordered such cases to be reconsidered.

Both rulings greatly expanded the scope of victim claimants under the three pieces of transitional justice legislation. But, like the lawmakers in the KMT dominated legislature, the Court stopped short of making an explicit statement over responsibility or liability of any individual person or group. In its reasoning, however, the Court did highlight the fact that the individual acts perpetrated against civilians were unconstitutional and illegal.

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<sup>71</sup> Judicial Interpretation No. 567 (24 October 2003). For an English language summary, see [http://www.judicial.gov.tw/constitutionalcourt/EN/p03\\_01.asp?expno=567](http://www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=567) (accessed 3 January 2017).

<sup>72</sup> Judicial Yuan Interpretation No. 624 (24 April 2007). For an English language summary, see [http://www.judicial.gov.tw/constitutionalcourt/EN/p03\\_01.asp?expno=624](http://www.judicial.gov.tw/constitutionalcourt/EN/p03_01.asp?expno=624) (accessed 3 January 2017).

Lastly, as Chen Shui-bian neared the end of his final term in office, he called a national referendum on transitional justice in an attempt to push a legislative agenda that would deal with KMT party assets. These assets were a key reason for the KMT's continued political resilience after democratization. During the martial law period, the KMT government utilized dubious forms of confiscation of personal wealth and property from political opponents, procured large swaths of land via land grabs, and established numerous of state-owned (ie, KMT owned) enterprises protected by government monopolies.<sup>73</sup> As a result, over forty years, the KMT amassed an enormous portfolio of assets ranging from cash reserves, rental properties, and corporations. Some have argued that the KMT assets are worth roughly NT\$150 billion.<sup>74</sup> The KMT's own government financial disclosures provide net worth estimates of NT\$ 33.1 billion in 2005 and NT\$25.6 billion in 2013.<sup>75</sup> The KMT ability to shield these assets during the transition period, allowed the party to retain a great deal of political influence. No other political party (the first new party being allowed to form in 1988) could compete with the KMT's wealth.<sup>76</sup> The source of this political wealth was a contentious issue among the population that believed the assets should be returned to those who lost them (or their families) during the martial law period. In 2000, Chen Shui-bian attempted to push through a legislative bill that would force the KMT to return all assets illicitly gained during the martial law period. However, this bill did not have

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<sup>73</sup> TIEN, *supra* note 30 at 86–87.

<sup>74</sup> For an analysis of the political arguments over the KMT assets, see DAFYDD FELL, PARTY POLITICS IN TAIWAN: PARTY CHANGE AND THE DEMOCRATIC EVOLUTION OF TAIWAN, 1991-2004 77–78 (2005).

<sup>75</sup> Jeang Bang-wen, *Yi di er ci zheng dang lun ti wei li, xi lun Taiwan zhuan xing zheng yi de shi jian* 以第二次政黨輪替為例, 析論台灣轉型正義的實踐 [An Analysis of Transitional Justice Practice in Taiwan Using the Second Ruling Party Alternation as a Case Example], 7 TAIPEI HAI YANG JI SHU XUE YUAN XUE BAO 台北海洋技術學院學報 J. TAIPEI COLL. MARIT. TECHNOL. 90–115, 100 (2016).

<sup>76</sup> *Id.* at 106. (citing official reports indicating that in 2013 the KMT held an estimated NT\$25.6 billion in assets, while its primary competitor the DPP held an estimated NT\$478.72 million in assets).

chance given the pan-blue control over the legislature.<sup>77</sup> Therefore, towards the end of his final year in office in an effort to frame the upcoming presidential election campaign around the issues of transitional justice and KMT party assets, and to instigate a renewed drive for further transitional justice legislation, Chen called for a public referendum. The language of Chen's referendum question was posed as follows:

Original	Translation
你是否同意依下列原則制定「政黨不當取得財產處理條例」，將中國國民黨黨產還給全民： 國民黨及其附隨組織的財產，除黨費、政治獻金及競選補助金外，均推定為不當取得的財產，應還給人民。已處分者，應償還價額。	Do you agree that the following principles should be adhered to when legislating an <b>Administration of Illicitly Acquired Assets of Political Parties Act</b> for the purpose of returning to the people the party assets of the Kuomintang? The properties of the Kuomintang and its affiliate organizations—excluding party dues, political donations, and public electoral subsidies—should all be presumed illicitly acquired and ought to be returned to the people. That which has already been liquidated, the [KMT] ought to compensate at market value.

Like Chen's other attempts to further transitional justice practice in Taiwan, the referendum was thwarted, but this time not directly by the KMT. Instead, the referendum was defeated by low voter turnout as only 26.34% of registered voters participated.<sup>78</sup> This fell well below the 50% threshold required by the Referendum Act<sup>79</sup> and thus nullified the referendum

<sup>77</sup> Kuo Cheng-tian, *Taiwan zhuan xing zheng yi yan jiu de zhuan xing* 台灣轉型正義研究的轉型 [*The Transformation of Taiwanese Transitional Justice Studies*], 12 TAIWAN ZHENG ZHI XUE KAN 台灣政治學刊 TAIWAN POLIT. SCI. REV. 3–10, 6 (2008).

<sup>78</sup> Central Election Committee, GONGGAO QUANGUO XING GONGMIN TOUPIAO AN DI 3 AN, DI 4 AN LIANG XIANG GONGMIN TOUPIAO AN TOUPIAO JIEGUO 公告全國性公民投票案第三案、第四案兩項公民投票案投票結果 [PUBLIC ANNOUNCEMENT OF THE VOTING RESULTS OF THE NATIONAL REFERENDUM ON ISSUE NUMBER 3 AND ISSUE NUMBER 4] (2008).

<sup>79</sup> LEGISLATIVE YUAN, GONG MIN TOU PIAO FA 公民投票法 [REFERENDUM ACT] art. 30 (2003). (requiring more than 50% of voting population to participate and of those more than 50% of the votes are required for a referendum to pass).

results. Despite its failure, however, the language of the referendum represents an explicit attempt by the DPP government to directly associate the KMT with illegal activities during the martial law period. The referendum question does not discuss the physical harms inflicted on individuals under the KMT regime, but it does address the property and financial harms inflicted on the Taiwanese populace from which the KMT continued to benefit. Although the referendum results were nullified, it should be noted that of the 4,550,881 individuals who voted, 91.46% actually agreed with the proposal.<sup>80</sup> This demonstrates a continuing public consciousness among a significant part of society that directly links the ‘incompleteness’ of Taiwan’s transitional justice to the financial assets of the KMT, and more specifically the illegal means through which the KMT amassed such a fortune during the martial law period.

Despite their attempts, Chen Shui-bian and the DPP could do little in terms of further legislating transitional justice in Taiwan. Public frustration with the DPP government’s inability to govern with the KMT dominated legislature as well as allegations against, and later convictions of Chen and his family for corruption, led to a significant drop in the party’s public opinion.<sup>81</sup> With the election KMT candidate Ma Ying-jeou (馬英九) to the presidency in 2008 and 2012, the Taiwanese government and legislature reverted to full KMT control. During Ma’s two terms in office, very little in the way of formal transitional justice legislation was accomplished. Yet, many of the KMT government policies, particularly those related to increased economic relations with China provoked a great deal of public outrage.<sup>82</sup> Eventually,

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<sup>80</sup> Central Election Committee, *supra* note 79.

<sup>81</sup> Jeang, *supra* note 76 at 104; Weitseng Chen & Jimmy Chia-shin Hsu, *Horizontal Accountability and the Rule of Law*, in *TAIWAN’S DEMOCRACY CHALLENGED: THE CHEN SHUI-BIAN YEARS* 145–171, 164–166 (Yun-han Chu, Larry Diamond, & Kharis Templeman eds., 2016).

<sup>82</sup> John Fuh-sheng Hsieh, *Taiwan in 2014: A Besieged President amid Political Turmoil*, 55 *ASIAN SURV.* 142–147 (2015).

the KMT found itself with extremely low opinion polls and dwindling popular support. As a result, the combined presidential and legislative elections of 2016 provided hope that the DPP could not only win the presidency back, but to also finally break nearly seventy years of KMT dominance over the legislature.<sup>83</sup>

## IV. A SECOND WAVE OF TRANSITIONAL JUSTICE LEGISLATION: THE DPP LEGISLATURE

### A. THE 2016 ELECTIONS AND REVISITING TRANSITIONAL JUSTICE

In the heated campaign leading up to the 2016 presidential and legislative elections, the spectre of past abuses at the hands of the KMT government and public dissatisfaction with the scope of extant transitional justice legislation became prime topics of debate. The discourse often focused on two specific issues: the continued lack of accountability for the events that occurred during the White Terror period and the failure of previous governments to adequately confront the KMT over its financial assets acquired during the martial law period.<sup>84</sup>

The campaign pledges of the DPP legislative candidates and especially its presidential candidate Tsai Ing-wen (蔡英文) promised to deal with these two issues via specific transitional justice legislation. Tsai's presidential campaign platform rested on "five pillars of reform" of which the fourth was specifically dedicated to transitional justice. Reflecting the populace's growing dissatisfaction with the KMT, Tsai's approach to transitional justice as political

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<sup>83</sup> Cal Clark & Alexander C. Tan, *Identity and Integration as Conflicting Forces Stimulating the Sunflower Movement and the Kuomintang's Loss in the 2014 Elections*, 2 CONTEMP. CHIN. POLIT. ECON. STRATEG. RELAT. INT. J. 313–349 (2016); Jeffrey T. Martin, *Policing an Occupied Legislature: Symbolic Struggle over the Police Image in Taiwan's Sunflower Movement*, 45 HONG KONG LAW J. 229–248 (2015).

<sup>84</sup> Christian Schafferer, *Transitional Justice in Taiwan: An Austrian Perspective*, 6 J. CONTEMP. EAST. ASIA 17–32 (2007); Christian Schafferer, *Debating "Unpopular" Issues in Taiwan*, in DEMOCRATIC GOVERNANCE IN NORTHEAST ASIA: A HUMAN-CENTERED APPROACH TO EVALUATING DEMOCRACY 130–144 (Brendan Howe ed., 2015).



discourse focused on the KMT's lack of accountability over its historical role in perpetrating abuses during the martial law period, as well as the methods by which KMT gained its vast financial assets. This approach is reflected in three key elements of her published transitional justice political platform. The first element offered a measure of acknowledgement to the amount of suffering Taiwan's indigenous communities had endured not only at the hands of the ROC government, but also at the hands of Japanese colonialists. Tsai promised that if elected she would "offer an official apology to Aborigines on behalf of the government", an act quite similar to that made by former president Lee Tung-hui to victims of the 228 Incident. Second, Tsai pledged that, if elected, her government would "bravely face the past," for "[w]e will not neglect errors because they are in the past. Likewise, because past rulers used national violence to hurt and bully the citizens, we have the historical wounds of [the] 228 [Massacre] and the White Terror. We can forgive, but we cannot forget. We must face up to it, and we cannot allow this history to be tampered with." And the third element specifically promises to deal with the illicitly gained assets of the KMT which, Tsai opines, "is the greatest defect in Taiwanese democracy" primarily because it "prevents fair competition between parties."<sup>85</sup>

Each of these campaign pledges reflect the significant legislative gaps in Taiwan's transitional justice experience. As already noted, these gaps existed primarily due to the KMT ability to hold a legislative majority after democratization, and thereby insulate its members and assets from any potential legislative drafts attempting to ascribe individual accountability or threatening to investigate and seize the party's financial assets. Mindful of Chen Shui-bian's past ineffectiveness at legislating transitional justice via a KMT dominated legislature, Tsai

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<sup>85</sup> Tsai Ing-wen, 'VOTE 2016: Tsai Ing-wen's Five Major Reforms—The DPP presidential candidate describes the five pillars of her future administration,' *Thinking-Taiwan*, <http://thinking-taiwan.com/vote-2016-tsai-ing-wens-five-major-reforms/#sthash.4L4Koq2E.dpuf> (accessed 17 January 2017).

ended her platform discussion on transitional justice with the qualifying statement that a positive future required not just the presidency, but also required “progressive forces” to “win a legislative majority.”<sup>86</sup>

That is exactly what happened for Tsai and the DPP. Tsai Ing-wen took the presidency with 56.1% of the vote, easily outdistancing her opponents KMT candidate Eric Chu (朱立倫) at 31% and People’s First Party candidate James Soong (宋楚瑜) at 12.8%.<sup>87</sup> More importantly, however, the DPP won a legislative majority for the first time in Taiwan’s democratic history. The 2016 legislative election results saw the DPP increase their seats from 40 to 68 (with 57 needed for a majority), while the KMT representation nearly halved from 64 seats to only 35 seats.<sup>88</sup> This allows the DPP to initiate and pass legislation without the need for direct negotiations with the KMT in order to obtain the required majority votes to pass a bill. For transitional justice in Taiwan, the election meant that for the first time *any* aspect of Taiwan’s authoritarian past had a fair chance of legislative consideration, and the KMT would be unable to stop any legislative bill reaching the floor for a final reading.

In her inaugural speech, President Tsai reiterated the importance of transitional justice for Taiwanese as a society to move forward. She stated that “the goal of transitional justice is to pursue true social reconciliation, so that all Taiwanese can take to heart the mistakes of that

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<sup>86</sup> Ibid.

<sup>87</sup> Central Election Commission, 2016 PRESIDENTIAL AND VICE PRESIDENTIAL ELECTION ZHONG YANG XUAN JU WEI YUAN HUI 中央選舉委員會 (CENTRAL ELECTION COMMISSION) (2016), <http://www.cec.gov.tw/english/cms/pe/24835> (last visited Jun 20, 2017).

<sup>88</sup> Central Election Commission, 2016 LEGISLATOR ELECTION ZHONG YANG XUAN JU WEI YUAN HUI 中央選舉委員會 (CENTRAL ELECTION COMMISSION) (2016), <http://www.cec.gov.tw/english/cms/le/24843> (last visited Jun 20, 2017).

era.”<sup>89</sup> Throughout the speech the scope of transitional justice was clearly expanded to reflect society’s palpable discontent with limited scope and time frame of the KMT legislation. The goals laid out by Tsai’s inaugural address focused on investigation and truth finding as a key mechanism for social reconciliation, and it also diverged from previous practice and specifically highlighted the transitional and historical justice issues of Taiwan’s indigenous communities.<sup>90</sup> With control over the legislature, presidency, and executive, the DPP legislators wasted little time in submitting two pieces of legislation in an attempt to fulfil some of Tsai’s campaign promises during the much anticipated “first 100 days”.

## B. Re-legislating Transitional Justice: DPP Legislative Efforts

### i. Political Party Assets and Affiliates

Although the DPP caucus proposed two transitional justice bills to the legislature, the first to pass, and possibly the most contentious, was the 2016 Act Governing the Handling of Illicit Assets of Political Parties and their Affiliates (hereafter, 2016 Illicit Assets Act).<sup>91</sup> Reflecting both Tsai’s desire to create a level playing field for all of Taiwan’s political parties and the public’s continued disapproval of the wealth of the KMT, the 2016 Illicit Assets Act specifically targets party assets acquired from 1945-1987; the years in which the KMT held an authoritarian monopoly on political power and the formation of other political parties was illegal.

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<sup>89</sup> Tsai Ing-wen, FULL TEXT OF PRESIDENT TSAI’S INAUGURAL ADDRESS FOCUS TAIWAN NEW CHANNEL (2016), <http://focustaiwan.tw/news/aip1/201605200008.aspx> (last visited Jun 20, 2017).

<sup>90</sup> *Id.*

<sup>91</sup> LEGISLATIVE YUAN, ZHENG DANG JI QI FU SUI ZU ZHI BU DANG QU DE CAI CHAN CHU LI TIAO LI 政黨及其附隨組織不當取得財產處理條例 [ACT GOVERNING THE HANDLING OF ILICIT ASSETS OF POLITICAL PARTIES AND THEIR AFFILIATES] (2016). Full text of the 2016 Illicit Assets Act can be found on the Legislative Yuan website at : <http://lis.ly.gov.tw/lglawc/lawsingle?0^C4C060898106C9DCC06081F20681D4C86E81A90689CCD4708981> (last visited 17 January 2017).

Furthermore, because the KMT did not hold all of its assets in name, but utilized several affiliate institutions and organizations to both acquire and manage assets, the original bill was broadened to include ‘affiliates’ (*fusui zuzhi* 附隨組織). The legislative sessions in which the bill was debated were fraught with high tempers, as the KMT, unable to stop the bill’s eventual passage with its minority, attempted to use all available procedural maneuvers to stall the bill’s passage.<sup>92</sup> It further attempted to sway public opinion against the bill through a media campaign that labelled the Illicit Assets Act as the beginnings of an era of “Green Terror” (*lüse kongbu* 綠色恐怖), with green being the color traditionally associated with the DPP.<sup>93</sup> These attempts however, failed and the Illicit Assets bill passed its third reading in an extraordinary legislative session on 25 July 2016.

The 2016 Illicit Assets Act is comprised of 34 individual articles organized in five chapters. The Act clearly outlines its transitional justice objectives. The initial article defines the purpose of the Act as “to investigate and deal with those party assets and the assets of affiliates illicitly obtained; establish an equal and fair competitive environment for all political parties; institute a fully-fledged democracy; and further the implementation of transitional justice.”<sup>94</sup> To accomplish this, the Act calls for the establishment of a committee under the Executive comprised of 11-13 individuals selected by the Prime Minister and serving 4 year terms.<sup>95</sup> To ensure fairness in proceedings, membership drawn from those with party affiliations may not

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<sup>92</sup> Christie Chen & Kuei-hsiang Wen, TAIWAN’S KMT BLOCKS SECOND READING OF ILLICIT PARTY ASSETS BILL FOCUS TAIWAN NEW CHANNEL (2016), <http://focustaiwan.tw/news/aip/201607160008.aspx> (last visited Jun 20, 2017).

<sup>93</sup> Abraham Gerber, LAWMAKERS SCUFFLE AMID ASSETS DEBATE TAIPEI TIMES (2016), <http://www.taipetimes.com/News/front/archives/2016/06/09/2003648210> (last visited Jun 20, 2017).

<sup>94</sup> LEGISLATIVE YUAN, *supra* note 87 at art 1. (為調查及處理政黨、附隨組織及其受託管理人不當取得之財產，建立政黨公平競爭環境，健全民主政治，以落實轉型正義)

<sup>95</sup> *Id.* at arts 2 and 18.

exceed 1/3 total for any single party.<sup>96</sup> The Act also restricts any member of the committee who is also a member of a political party from engaging in any party meetings or events while serving as a committee member.<sup>97</sup>

The Illicit Assets Committee meets once per month and is tasked with investigating and compiling information on alleged illicit assets, as well as seizing, and if possible, reinstating such properties to their original owner.<sup>98</sup> To do this, the Act provides the committee with broad powers such as directly requesting information from political parties and government offices, sending representatives to political party headquarters and government offices to obtain documentation, as well as send written requests for interviews with individuals.<sup>99</sup> In addition to these powers, the Committee can also issue fines to political parties or their affiliates if they are found to be obstructing an investigation, or attempting to liquidate assets under investigation.

Related to this, the Act requires political parties and their affiliates active during the period of 1945-1987 are required to issue full reports of all assets clearly stating the asset value, asset origins (with evidence), date of acquisition, and evidence of means of transfer.<sup>100</sup> Furthermore, it prohibits political parties from liquidating any assets under investigation without approval of the Illicit Assets Committee.<sup>101</sup>

Since its formation under the leadership of Wellington Koo (Koo Li-hsiung 顧立雄), the Illicit Assets Committee has actively gone after the KMT's vast financial resources. The Committee has frozen nearly all the KMT's bank accounts making it difficult for the KMT to pay its employee salaries, and has also begun the process of investigating the political party's

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<sup>96</sup> *Id.* at art 18.

<sup>97</sup> *Id.* at art 20.

<sup>98</sup> *Id.* at art 2.

<sup>99</sup> *Id.* at art 10.

<sup>100</sup> *Id.* at art 8.

<sup>101</sup> *Id.* at art 9.

vast property empire.<sup>102</sup> It is still early days to measure the extent to which the Committee's activities will contribute to the public's sense of transitional justice; however, since its formation, the Committee has endeavored to fulfil Tsai's pledge of dismantling the KMT's vast financial resources to create a more equitable competitive environment for multi-party democratic elections.

ii. Promotion of Transitional Justice Bill

In addition to the Illicit Assets Act, the DPP caucus also submitted a Promotion of Transitional Justice Bill (hereafter Promotion Bill) specifically targeting the knowledge gap of victims, abuses and perpetrators during the White Terror period.<sup>103</sup> If passed, the Promotion Bill would function much the same as the 2016 Illicit Assets Act. The bill provides for the establishment of a truth commission under the Executive Yuan with the powers to collect from individuals, political parties, and government offices all available documentation relating to abuses occurring during the White Terror period.<sup>104</sup> The committee is also empowered to fine individuals, political parties and government officials for obstructing investigations or destroying related files or other relevant documentation.

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<sup>102</sup> Chen Wei-han, COMMITTEE FREEZES KMT BANK ACCOUNT TAIPEI TIMES (2016), <http://www.taipeitimes.com/News/front/archives/2016/09/22/2003655671> (last visited May 15, 2017).

<sup>103</sup> Min jin dang dang tuan 民進黨黨團 [DPP Caucus], CU JIN ZHUAN XING ZHENG YI TIAO LI 促進轉型正義條例 (PROMOTION OF TRANSITIONAL JUSTICE BILL) LI FA YUAN QUAN QIU ZI XUN WANG 立法院全球資訊網 [LEGISLATIVE YUAN OFFICIAL WEBSITE] (2016), [http://lci.ly.gov.tw/LyLCEW/agenda1/02/pdf/09/01/07/LCEWA01\\_090107\\_00045.pdf](http://lci.ly.gov.tw/LyLCEW/agenda1/02/pdf/09/01/07/LCEWA01_090107_00045.pdf) (last visited May 20, 2017).

<sup>104</sup> *Id.* at art 3.

At the completion of this Article, the Promotion Bill has, much to the chagrin of many involved, stalled in the Legislative Yuan.<sup>105</sup> Transitional justice is merely one issue currently confronting the DPP government, and other legislative bills related to the economy, environment, and increasingly hostile cross-straits relations have taken priority. Recently, Tsai reiterated her hopes that the bill would pass; however, recent efforts in the Executive Yuan appear to indicate that the fate of this bill is uncertain.<sup>106</sup> Even as early as her inaugural speech, however, there appears to have been some skepticism over the future of the bill as Tsai announced her intention to establish a truth and reconciliation committee within the president's office.<sup>107</sup> More recently she pledged to establish a commission to produce the first ever comprehensive account of the White Terror period.<sup>108</sup> Without supporting legislative authority, however, it is difficult to speculate how effective presidential committees will be at locating and obtaining documentation related to the abuses occurring under martial law.<sup>109</sup> Regardless, president Tsai seems adamant to complete her campaign and inaugural speech pledges to fill the 'gaps' in Taiwan's transitional justice experience.

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<sup>105</sup> Lee Hsin-fang, SU URGED TO ACT ON TRANSITIONAL JUSTICE TAIPEI TIMES (2017), <http://www.taipeitimes.com/News/taiwan/archives/2017/05/31/2003671625> (last visited Jun 20, 2017).

<sup>106</sup> Tsai Ing-wen, PRESIDENT TSAI MEETS DELEGATION OF OVERSEAS CHINESE-LANGUAGE MEDIA ZHONG HUA MIN GUO ZONG TONG FU 中華民國總統府 [OFFICE OF THE PRESIDENT REPUBLIC OF CHINA (TAIWAN)] (2017), <http://english.president.gov.tw/News/5144> (last visited Jun 20, 2017).

<sup>107</sup> Rowen and Rowen, *supra* note 6 at 1–3.

<sup>108</sup> Weng Lu-huang, Su Fang-ho and Jake Chung, 'White Terror probe to be finished in three years: Tsai' Taipei Times, 11 December 2016 <http://www.taipeitimes.com/News/front/archives/2016/12/11/2003660977> (accessed 17 January 2017).

<sup>109</sup> Bowman, *supra* note 14. (noting that much of Chen Shui-bian's efforts to establish human rights and transitional justice mechanisms under the office of the president or the Executive Yuan were ineffective overall and easily dismantled when Ma Ying-jeou took the presidency).



## V. PROSPECTS FOR THE FUTURE of TRANSITIONAL JUSTICE

When comparing the scope and language of the KMT era and DPP era transitional justice legislation, the differences are obvious. Because the KMT retained an elected majority in the legislature, it could directly control the official stance on transitional justice. The former authoritarian party's transitional justice legislation, therefore, emphasized reparations and limited acknowledgement, while precluding any consideration of criminal liability, individual accountability, or the necessity of amnesty. The very fact that the KMT remained in power for so long after the democratic transition provided an unofficial amnesty to those who had perpetrated abuses during the authoritarian period. Once, the DPP won the legislative majority after 20 years of KMT dominance, and for the first time the scope of transitional justice legislation was unbound. Therefore, the DPP legislation attempts to fill the 'gaps' of accountability, knowledge, and finances, with specific legislative language.

Yet, not everyone is happy the DPP's transitional justice legislative agenda. Like the KMT legislation, the DPP's bills also contain language which limits the applicability of transitional justice measures. Both the 2016 Illicit Assets Act and the Promotion Bill are temporally limited to the period of 1945-1987 when the KMT ruled. This excludes consideration of transitional justice needs of those who suffered abuse and loss under Japanese colonialism (1895-1945). This is a particularly poignant issue with Taiwan's indigenous communities who suffered great loss of lands, as well as were victims of several massacres as the Japanese attempted to pacify the 'savage aborigines'. Although Tsai Ing-wen fulfilled her pledge of

formally apologizing to the indigenous communities on behalf of the national government,<sup>110</sup> the primary legislative proposals for transitional justice submitted by the DPP do not explicitly mention the issues and claims of Taiwan's indigenous communities. As a result, numerous bills have been submitted to the Legislative Yuan explicitly dealing with 'aboriginal transitional justice' (*yuanzhumin zhuanxing zhengyi* 原住民轉型正義) or 'aboriginal historical justice' (*yuanzhumin lishi zhengyi* 原住民歷史正義).<sup>111</sup> Most submissions seek full or partial restoration of aboriginal lands expropriated via Japanese colonialism or KMT coercion. Additionally, many bills request a measure of historical justice. Similar to truth-seeking, there are many tribes which the Taiwanese government does not specifically recognize as 'aboriginal' or as a distinct tribe, thus their cultural and political representation remains limited.<sup>112</sup> Many of the bills, therefore, request research and official clarification of the complexity of the indigenous tribes of Taiwan. In partial response to this, Tsai recently established the Presidential Indigenous Historical Justice and Transitional Justice Committee (*Yuanzhu minzu lishi zhengyi yu zhuanxing zhengyi wei yuan hui* 原住民族歷史正義與轉型正義委員會) tasked with managing many of these issues.<sup>113</sup> The DPP needs to ensure that transitional justice is all-encompassing, otherwise its legislation runs the risk of being categorized as myopic, much like the previous legislation of the KMT.

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<sup>110</sup> Tsai Ing-wen, FULL TEXT OF PRESIDENT TSAI ING-WEN'S APOLOGY TO INDIGENOUS PEOPLE FOCUS TAIWAN NEW CHANNEL (2016), <http://focustaiwan.tw/news/aip/201608010026.aspx> (last visited Jun 19, 2017).

<sup>111</sup> cite

<sup>112</sup> Ciwang Teyra, WHO ARE THE TAIWANESE INDIGENOUS PEOPLES? KETAGALAN MEDIA (2015), <http://www.ketagalanmedia.com/2015/07/07/taiwanese-indigenous-peoples/> (last visited Jun 25, 2017).

<sup>113</sup> Zong tong fu Yuan zhu min zu li shi zheng yi yu zhuan xing zheng yi wei yuan hui 總統府原住民族歷史正義與轉型正義委員會 (Presidential Indigenous Historical Justice and Transitional Justice Committee ), OFFICE OF THE PRESIDENT OF THE REPUBLIC OF CHINA (TAIWAN), <http://indigenous-justice.president.gov.tw/TW> (last visited Jun 28, 2017).

This Article has demonstrated how the local, post-transition conditions of individual locales impacts the scope and timeline of transitional justice. Taiwan represents a fascinating example for transitional justice has been extremely slow, quite conservative, and viewed with varying levels of ambivalence by the government and populace. One important factor influencing Taiwan's transitional justice experience has been the political resilience of the KMT, the former authoritarian party. Yet with the transition of political power and control of the legislature to the DPP, the modes of engagement and the priorities of 'transitional justice' are again constrained by various factors. The pursuit of the KMT assets bill could be argued as important for its influence on the democratic functioning of Taiwan's government and electoral system, yet since its passage the political drive for the Promotion Act has waned, and the use of powers of the Illicit Assets Committee seems to beg the question of whether the DPP transitional justice is actually about confronting the past, healing old wounds, or simply a case of revenge.<sup>114</sup> It is still early days for the DPP government and legislature. How transitional justice advances during the next three years of Tsai's presidency remains to be seen.

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<sup>114</sup> Chen, *supra* note 103; Chun-hui Yang & Jonathan Chin, KMT WORKERS PROTEST FREEZE OF ASSETS TAIPEI TIMES (2016), <http://www.taipeitimes.com/News/taiwan/archives/2016/10/14/2003657131> (last visited Jun 20, 2017).